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Security Council

Sixtieth year

Provisional

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Wednesday, 15 June 2005, 3.25 p.m.

New York

President:	Mr. De La Sablière	(France)
Members:	Algeria	Mr. Benmehidi
	Argentina	Mr. García Moritán
	Benin	Mr. Zinsou
	Brazil	Mr. Tarrisse da Fontoura
	China	Mr. Zhang Yishan
	Denmark	Mr. Faaborg-Andersen
	Greece	Mr. Vassilakis
	Japan	Mr. Kitaoka
	Philippines	Mr. Mercado
	Romania	Mr. Motoc
	Russian Federation	Mr. Denisov
	United Kingdom of Great Britain and Northern Ireland	Sir Emyr Jones Parry
	United Republic of Tanzania	Mr. Manongi
	United States of America	Mr. Gerald Scott

Agenda

The situation in Burundi

Letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/158)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

05-38527 (E)

The meeting was called to order at 3.25 p.m.

Adoption of the agenda

The agenda was adopted.

The situation in Burundi

Letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council (S/2005/158)

The President (*spoke in French*): I should like to inform the Council that I have received a letter from the representative of Burundi, in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

On behalf of the Council, I extend a warm welcome to His Excellency Mr. Didace Kiganahe, Minister of Justice of Burundi.

At the invitation of the President, Mr. Kiganahe (Burundi) took a seat at the Council table.

The President (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Ralph Zacklin, Assistant Secretary-General for Legal Affairs.

It is so decided.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them document S/2005/158, which contains the text of a letter dated 11 March 2005 from the Secretary-General addressed to the President of the Security Council transmitting the report of the assessment mission dispatched to Burundi with the objective of considering the advisability and feasibility of establishing an international judicial commission of inquiry.

At this meeting, the Security Council will hear a briefing by Mr. Ralph Zacklin, Assistant Secretary-General for Legal Affairs. I now give him the floor.

Mr. Zacklin: I shall be brief. The report of the assessment mission, which was led by Assistant Secretary-General Kalomoh of the Department of Political Affairs in May of 2004, is before the Council and is self-explanatory. I will focus my remarks on the judicial and non-judicial mechanisms that have been recommended and place them in their national and international contexts.

The request in July 2002 by the then-President of Burundi, Pierre Buyoya, for the establishment of an international judicial commission of inquiry, which was foreseen in the Arusha Peace and Reconciliation Agreement, must be considered in the light of Burundi's history of ethnic conflict, the events that have taken place since the conclusion of the Arusha Agreement in 2000 and the experience gained by the United Nations in promoting justice and the rule of law over the past 12 years. It should also be examined against the background of four international commissions of inquiry established between 1993 and 1995, three of which were at the request of the Council.

For all of their differences, the four commissions shared similar features. Their subject matter and their temporal jurisdiction were limited to the events of 1993, namely, the coup d'état, the assassination of the President of Burundi and the massacres that followed. As the earlier 1972 massacre of Hutus was outside their mandate, a legal determination that the crime of genocide had been committed in Burundi was made only in respect of the 1993 massacres of Tutsis. While all four commissions recommended that if impunity is to be eradicated those responsible should be brought to account, no action has been taken on those recommendations by any United Nations organ.

In such a deeply divided society, where inter-ethnic killings in 1965, 1972, 1988, 1991 and 1993 have formed part of a dreadful and deeply disturbing repetitive cycle, limiting the mandate of any inquiry to a single cycle of massacres and characterizing it — and it alone — as genocide was considered by many of the mission's interlocutors in Burundi as a partial and biased account of the events. The demands for the establishment of a commission of inquiry whose temporal jurisdiction extends over four decades of

Burundi's recent history are thus an appeal for fairness in establishing and recounting the historical truth and putting the 1993 massacres in a broad historical perspective.

Against that background, the Secretariat assessment mission was mandated by the Council to determine the advisability and feasibility of establishing yet another commission of inquiry and to consider the relationship between the international judicial commission of inquiry and the national truth and reconciliation commission envisaged under the Arusha Agreement. Based on extensive consultations with representatives of the Government, political parties and civil society at large, and convinced of the acute need to support the peace process and, in the words of the Council, foster "truth and reconciliation while achieving justice" (*S/2004/72, annex, para. 2*), the mission considered modalities for establishing a twin accountability mechanism to clarify the historical truth, investigate the crimes and bring to justice those responsible.

The mission has accordingly recommended the establishment of a non-judicial accountability mechanism in the form of a truth commission, and the establishment of a judicial accountability mechanism in the form of a special chamber within the court system of Burundi. The mission recognizes that this proposal is a departure from the letter — although not the spirit — of the Arusha Agreement. It was nevertheless convinced that the establishment of the two commissions envisaged under the Arusha Agreement, having virtually identical temporal and subject-matter jurisdiction, including powers of investigation, would create the inevitable and undesirable risk of overlapping jurisdictions and the possibility of contradictory findings, and would represent a misuse of scarce resources. Given the state of the local administration of justice in Burundi, it also concluded that the likelihood of a local trial process meeting international standards of justice was questionable.

The proposed truth commission would be established under the existing Burundian law, revised as appropriate. It would be composed of five members: three international and two national commissioners. The mandate of the commission would be to establish the historical facts and determine the causes and nature of the conflict in Burundi, classify the crimes committed since independence in 1962 and identify those responsible.

The experience gained in establishing parallel judicial and non-judicial accountability mechanisms in Sierra Leone and East Timor will be helpful in determining the relationship between the truth commission and the proposed judicial accountability mechanism. The expeditious establishment of the truth commission for Burundi will ensure that, by the time a special chamber is established, the results of the investigations carried out by the commission could be shared with the prosecutor of the special chamber.

As a matter of sequencing, it is possible that the two mechanisms will operate simultaneously for a certain period of time. Should there be concurrent operation, the modalities for cooperation could include a referral of cases from the commission to the chamber, the sharing of information and evidentiary material and, where appropriate, the sharing of services, knowledge and expertise.

In deciding to recommend a special chamber within the court system of Burundi, the mission has opted for a judicial accountability mechanism located in the country and forming part of the Burundian court system. It is envisaged that the special chamber would have the competence to prosecute those bearing the greatest responsibility for the crime of genocide, crimes against humanity and war crimes committed in Burundi. Its temporal jurisdiction would be limited to specific phases of the conflict, and would include, as a minimum, the events between 1972 and 1993, inclusive.

The legal basis for the establishment of the special chamber and the applicable law governing its operation will be the Burundian law, with the necessary modifications introduced to ensure procedural guarantees of fair trial and due process of law. In this connection, I should point out that, based on existing United Nations practice, in order for the United Nations to cooperate in the establishment of the special chamber, its founding instrument will have to exclude the death penalty from the sentencing framework and declare any amnesty given to genocide, crimes against humanity and war crimes invalid before the chamber.

As in the case of the truth commission, the composition of the special chamber would be mixed, with a majority of international judges and an international prosecutor and a registrar. It is envisaged

that the prosecutor's office and court management would include a substantial international component working alongside Burundi nationals.

In proposing both a judicial and a non-judicial accountability mechanism, the mission has taken into account the Arusha Agreement, the needs and expectations of the Burundians so clearly expressed to the mission, the capacity of the Burundian administration of justice, established United Nations principles and practices and the practicality and feasibility of any proposed mechanism.

In so doing, it has attempted to apply the lessons learned from the United Nations experience in establishing international tribunals and transitional justice mechanisms since 1993. In an integrated approach to justice and the rule of law in post-conflict societies, the establishment of a judicial accountability mechanism clearly cannot be viewed in isolation, but must be seen as part of a whole, placed in the general context of overall judicial reform and capacity-building and pursued in tandem with other transitional justice and rule of law initiatives.

As part of this comprehensive approach to justice and the rule of law, properly organized and implemented, the establishment of a truth-telling mechanism and a special chamber in the court system of Burundi would have the added value of enhancing the capacity of the Burundian administration of justice, strengthening the judicial sector and leaving behind a legacy of international standards of justice and a core group of experienced judges, prosecutors, defence counsel and court managers.

The establishment of such mechanisms for Burundi with mixed composition will serve to promote objectivity, impartiality and credibility. At the same time, it will promote a sense of national ownership through participation of Burundian nationals in both processes. This sense of ownership is of critical importance, and it cannot be emphasized too strongly that the success or failure of such mechanisms will depend on the degree to which Burundi as a whole embraces the proposals. Given the deep ethnic divisions within Burundian society and the mutual distrust between the two ethnic groups, the mission strongly urges that the judges, prosecutor and defence counsel selected be known for their integrity, objectivity and impartiality and recognized in Burundi as transcending the ethnic divide.

I would be remiss if I did not say a few words about funding. As national entities, neither accountability mechanism for Burundi would be entitled to financing through assessed contributions. It is obvious, however, that the establishment of any accountability mechanism for Burundi will have to rely, virtually in its entirety, on international funding. There are a number of recent examples of both judicial and non-judicial accountability mechanisms being funded by voluntary contributions from Governments or by a mixture of such contributions and institutional support from the international and regional intergovernmental machinery. While that may not be ideal, if there is a true commitment on the part of Governments and the existing institutional framework in the rule-of-law sector, it can be done. What is important is that whatever mode of financing is utilized, there should be viable, sustained funding that will permit the mechanisms to take root, fulfil their mandates and create the desired legacy of truth, reconciliation and justice.

The report of the assessment mission has presented a comprehensive approach to the pursuit of truth and justice in Burundi. If that approach is acceptable to the Council, it should mandate the Secretary-General to engage in negotiations with the Government of Burundi on the practical implementation of the proposal to establish the truth commission and the special chamber with a view to concluding an agreement with the Government of Burundi on the terms and conditions for United Nations cooperation in the establishment and operation of the truth commission and the special chamber. It goes without saying that such a process should be based on a broad-based, genuine and transparent consultation with a range of national actors and civil society to ensure that the general legal framework for the establishment of judicial and non-judicial accountability mechanisms reflects the views and wishes of the people of Burundi and that the sense of national ownership is deep and genuine.

The President (*spoke in French*): I thank Mr. Zacklin for his comprehensive briefing.

As there is no list of speakers for the Council members, I should like to invite them to indicate to the Secretariat if they wish to take the floor.

I now give the floor to Mr. Didace Kiganahe, Minister of Justice of Burundi.

Mr. Kiganahe (Burundi) (*spoke in French*): On behalf of the Government of the Republic of Burundi, which it is my honour to represent here, I should like first to congratulate France on its presidency of the Security Council this month and to thank the its predecessor, Denmark, for its excellent work in May.

After two years of intense negotiations, the people of Burundi, in August 2000, reached the Arusha Peace and Reconciliation Agreement in order to put an end to the deep-rooted causes of the continuous state of violence, insecurity and political instability. Following an in-depth analysis of the historic causes of the conflict, the parties to the negotiations in Arusha agreed, inter alia, to the request of the Transitional Government for the establishment by the Security Council of an international judicial commission of inquiry into the genocide, war crimes and other crimes against humanity. The commission would be mandated to investigate and establish the facts for the period from the country's accession to independence to the signing of the Arusha Agreement, to qualify the crimes, to bring to justice those responsible, and to submit its report to the Security Council.

The Burundian parties to the negotiations also agreed that the Government of Burundi should request the Security Council to establish an international criminal tribunal to bring to justice and punish the guilty should the report establish that acts of genocide, war crimes and other crimes against humanity had occurred.

Lastly, the parties to the Arusha negotiations agreed to create a national truth and reconciliation commission to investigate and establish the truth about the grave acts of violence committed during the cyclical conflicts that cast a tragic pall over Burundi from independence to the signing of the Arusha Agreement, to classify crimes other than genocide, crimes against humanity and war crimes, to establish accountability, to identify both the perpetrators and victims of such crimes, to propose means of arbitration and reconciliation, and to clarify the history of Burundi, going back as far as possible in order to educate the people of that country about their own past.

At the request of the Transitional Government, the Security Council in May 2004 dispatched an assessment mission to Burundi to consider the advisability and feasibility of establishing an international judicial commission of inquiry. We meet here today to consider the report submitted by the mission.

I should like to thank the Security Council for having acceded to the request of the Government of Burundi and for having thereby made a substantial contribution to the implementation of the Arusha Agreement. The Government of Burundi has also asked me to congratulate the members of the Kalomoh mission on the quality of their report and the wise proposals they have submitted to the Security Council.

Having described the political developments of recent years and indicated the shortcomings of the mechanisms proposed in Arusha, the mission report recommends the establishment of a single commission to establish the truth and of a special chamber within the court system of Burundi to establish accountability.

For its part, the Government of Burundi approves that new approach, which is justified on two crucial counts. The first is the fact that the distinction between the national truth and reconciliation commission and the international judicial commission of inquiry had not been clear. The *ratione temporis* and *ratione materiae* competences, as well as the investigating powers of the two commissions, were identical. There was thus a clear risk of overlap between the two commissions.

Secondly, the structure of the judicial system in Burundi is generally unable to handle the complex cases of genocide, crimes against humanity and war crimes. The juridical bases of the combined truth commission and the special chamber would be provided in both cases by a national law and an agreement between the United Nations and the Government.

In the light of the Kalomoh commission's conclusions, the Government of Burundi has asked me to make the following communication to the Council.

The Government of Burundi supports the recommendations, which, in its view, meet the dual concerns of the political negotiators in Arusha and of the people of Burundi as a whole, first, to establish the truth and, secondly, to bring the guilty to justice and punish them. Furthermore, the Government of Burundi believes that, beyond the quest for truth and justice, the issue of reconciliation should be placed at the heart of the question of peace and national unity. The new

version of the truth commission does not, in our view, highlight sufficiently the aspect of reconciliation, which is essential for overcoming the consequences of the divisions of the past. For that reason, the Government of Burundi would request of the Security Council that these discussions and those that will follow give priority to the aspect of national reconciliation. We will therefore need to make a determination as to the nature of the structure that will be responsible for this mission.

With respect to the judicial mechanism that will be charged with assigning responsibility, the Government supports the description which is given of it in the mission's report and wishes to point out that there is a need to accelerate the reform of the judicial system that is now under way in order to enable it to discharge the new mission entrusted to it. The final document should therefore clarify the relationship between the truth commission and the court system's special chamber.

The Government of Burundi also believes that the Security Council should specify the financing modalities for the twin mechanism for clarifying the facts and determining responsibility. Indeed, the very credibility of the system that would be put in place will depend on its enjoying continuous and sufficient funding throughout its operation.

Finally, the Government of Burundi hopes that the negotiations aimed at establishing the practical modalities for implementing the report's recommendations will send a strong signal — one that is awaited by our people, who so strongly desire truth and justice. Therefore, in order to raise the awareness of the people of Burundi, who will be the beneficiaries of such mechanisms, it might be desirable to undertake a broad-based consultation involving all sectors of society in order to sound out the people of Burundi and encourage them to support the new truth and justice mechanisms with regard to war crimes, crimes of genocide and other crimes against humanity.

Following the creation of the institutions that emerge after the elections, mixed-composition teams — representing the Government of Burundi and the United Nations — will be established to determine the nature of the tasks ahead and a programme of work before the agreed mechanisms are put in place.

The Government of Burundi is grateful to the Security Council for all the efforts it has made in order to ensure the success of this process. The people of Burundi remember the support and attention that they have received as well as the wise advice which the Security Council has given the political leadership in Burundi, particularly during the various missions to the country.

Our thanks go also to the Secretary-General for his unflagging attention to the cause of peace in Burundi. Throughout this process, the Government of Burundi has always felt, through the very detailed reports that he submitted to the Security Council, his support and encouragement. I should like to take this opportunity to invite him, on behalf of the Government of Burundi, to come to our country to witness the positive results of his untiring efforts.

The President (*spoke in French*): I thank the Minister of Justice of Burundi for his comments.

Mr. Denisov (Russian Federation) (*spoke in Russian*): First of all, I should like to thank Mr. Kiganahe, Minister of Justice of Burundi, and the Assistant Secretary-General for the briefings given today. We thank also the members of the Secretariat assessment mission to Burundi, headed by Mr. Kalomoh, Assistant Secretary-General, for the very substantive and detailed report, whose recommendations and proposals deserve further study. We believe that the most important recommendations are supported by the Secretary-General in his letter of 11 March. Further study of the report is necessary in order to take the necessary well-thought-out decisions and to step up efforts by the international community to establish the truth, avoid partiality and bring about justice in Burundi.

Our delegation believes that the mission's recommendation to establish two bodies, which was discussed in detail and commented upon by both speakers — that is, the recommendation to set up a mixed-composition truth commission and a special chamber in the court system of Burundi — requires a political and legal analysis that takes account of the position of the Government of Burundi and of all interested parties and political forces in that country.

Mr. Motoc (Romania) (*spoke in French*): I, too, wish to begin by extending a warm welcome to Mr. Didace Kiganahe, Minister of Justice of Burundi, and by thanking him for his very enlightening statement. His participation in today's meeting gives us an opportunity to convey to him personally and to the

authorities and the people of Burundi a message of encouragement and support for the continuation of their efforts towards national reconciliation and the establishment of a climate of justice, with a view to the development of Burundi as a stable State. I wish also to thank Mr. Ralph Zacklin for his presentation, which was extremely clear and interesting.

Romania has regularly emphasized the need for the United Nations, the Burundian authorities and the countries of the region to make a concerted effort to put an end to the climate of impunity in Burundi and to ensure that those who have violated human rights may be brought to justice without delay. In that context, priority must be attached to strengthening the country's judicial system in order to provide conditions more conducive to bringing the perpetrators of such acts to justice.

In that same vein, we endorse the approach recommended in the Kalomoh report (S/2005/158) towards establishing the truth and creating a climate of justice in Burundi through the creation of a commission of inquiry of mixed composition and a special chamber. We believe that the principles of justice and the rule of law must apply at the local level; to a great extent, progress towards genuine and effective justice depends on local ownership of the process. At the same time we are of the view that measures in the sphere of criminal justice must be accompanied by a non-judicial mechanism to ensure a substantial contribution to the promotion of national reconciliation.

Here, we are highly encouraged by the Transitional Government's reaffirmation of its political will to eliminate impunity and to lend all necessary support and cooperation to the establishment of the judicial mechanisms that have been proposed.

I take this opportunity to reaffirm once again our opinion that any resolution of the situation in Burundi must be based on a coordinated regional approach. In that regard, I would ask the Minister of Justice whether he could shed further light on what possibilities he sees for strengthening practical regional arrangements in support of the activities of the mechanisms to be established with a view to combating impunity in Burundi.

Finally, we believe that the United Nations Operation in Burundi could play an even more important role by becoming involved, within the terms of its mandate, in the process of capacity-building for the Burundian judicial system.

Mr. Zhang Yishan (China) (*spoke in Chinese*): I wish at the outset to thank the Minister of Justice of Burundi for his statement. I should like also to thank Assistant Secretary-General Zacklin for his briefing.

We are very pleased to see that in recent months the political process in Burundi has been making consistent positive progress. That is a result of the joint efforts of the Government of Burundi and the entire international community. China considers that the establishment of an international judicial commission of inquiry for Burundi would be consistent with the wishes of the Burundian people and would help the further development of the political process in that country.

China supports the recommendations set out in the report transmitted by the Secretary-General (S/2005/158): the establishment of a national truth and reconciliation commission and the establishment of a special chamber within the court system of Burundi to bring to justice those responsible for committing crimes of genocide, crimes against humanity and war crimes. China supports the Security Council authorizing the Secretary-General to hold talks with the Government of Burundi and the other parties in the country with a view to implementing those recommendations.

Mr. Tarrisse da Fontoura (Brazil): My delegation would like to welcome His Excellency Mr. Didace Kiganahe, Minister of Justice of Burundi, and to thank him for taking the time to come to New York to state his Government's views on the recommendations of the Kalomoh report (S/2005/158). I also wish to express our appreciation for the briefing by Mr. Ralph Zacklin, Assistant Secretary-General for Legal Affairs.

Brazil believes that there is a very broad consensus, including among Council members, regarding the need to fight impunity in Burundi, particularly because the Burundians themselves understand that the quest for truth and justice is an essential part of their peace and reconciliation process. The consensus covers also the timing for action: we should move forward in a smooth and prompt way. In that context, we expect that the authorities in Burundi, members of the current Transitional Government and those who will be elected in the near future will

cooperate fully with the international community, and in particular with the Secretary-General and his Special Representative. At the same time, we hope that the Council and the international community at large can act in a timely manner, providing the guidance and assistance required by the Burundians and also upholding their commitment regarding the implementation of the recommendations of the Kalomoh report, including their financial aspects.

To sum up, I would encourage the Transitional Government to maintain its commitment to the transitional process in Burundi and would convey to all parties concerned that peace and development can be promoted by putting an end to impunity for crimes committed in that country.

Mr. Gerald Scott (United States of America): I want to thank the Minister of Justice of Burundi for his appearance here and for his words to us, and to congratulate him on his efforts to bring about a transition to a peaceful, stable society based on the rule of law. I also want to thank the Assistant Secretary-General for the Office of Legal Affairs for his detailed and clear report to us.

The United States has strongly supported the efforts to assist Burundi in making a peaceful transition. Such a society based on the rule of law holds out the best hope for a better future for the people of Burundi and even for the region more generally. To achieve that goal there must be a process by which Burundi faces and understands its past.

In that connection, we have supported the assessment mission, and we find much in the report (S/2005/158) and its recommendations that merits implementation. We look forward to the Secretary-General starting negotiations with the Government of Burundi to bring this about soon.

The recommendations raise a number of questions which need to be addressed and which have been alluded to by both the Assistant Secretary-General and the Minister of Justice. The report and recommendations, after all, constitute a skeleton rather than a detailed blueprint. We would therefore be obliged if further elucidation of these points could be furnished at some point soon.

First of all, we note that the national truth and reconciliation commission will attempt to implement the report's recommendation to establish the facts and determine the causes and nature of the conflict in Burundi, classifying the crimes committed since its independence and identifying those responsible for the crimes of genocide, crimes against humanity and war crimes committed in the various cycles of conflict. That is a very large mandate, and we hope the commission will not become excessively bogged down in a detailed historical search for root causes in the course of Burundi's history.

Secondly, the question of costs has been raised, and we should like to have some sort of estimate of what the ultimate cost of these efforts will be.

We agree strongly with the statement that we need a national sense of ownership of both the commission and the special chamber, and we should like further elucidation of the ways in which this sense of ownership can be promoted.

Finally, we agree that these activities should be funded voluntarily.

Mr. Kitaoka (Japan): I would like to join the previous speakers in extending a warm welcome to Minister Kiganahe and expressing my appreciation for his attendance at this meeting to provide his Government's view on the recommendations in the Secretary-General's report on the possible establishment of two mechanisms to bring about national reconciliation and justice in Burundi. I also thank Mr. Zacklin for introducing the report of the Secretary-General.

We welcome the news that the transitional process in Burundi is making steady progress, as shown by the successful holding of the communal elections, and we applaud the commitment of each and every Burundian to that process. We also welcome the statement of Minister Kiganahe on the recommendations of the Secretary-General, as it demonstrates the determination of his Government to eradicate the culture of impunity while promoting national reconciliation.

We consider some details remain to be sorted out in the recommendations of the Secretary-General. In that connection, I would like to put two questions to Minister Kiganahe.

First, I am fully aware of the urgent need to establish such mechanisms, but doing so will require the discussion and approval of the Parliament of Burundi once the transition is completed. Therefore, I

should be grateful if the Minister could give us his view on the timing of the establishment of the mechanisms.

Secondly, according to the report of the Secretary-General, the legal basis for the establishment of the special chamber and the laws governing its operation will be Burundian law, with necessary modifications. I therefore would like to ask whether the Minister considers that it would be possible to achieve broad support for the recommendations among the people of Burundi and, in particular, the members of the Parliament and the various political parties.

Sir Emyr Jones Parry (United Kingdom): Like other colleagues, I am grateful to both speakers for their contributions earlier.

Ending impunity for past crimes in Burundi is vital. It is necessary for national reconciliation. It is essential for justice, and it is a desirable deterrent throughout the region. Therefore, the United Kingdom supports very much the recommendations we have heard this afternoon.

The hybrid special chamber, with the mandate up to the present day, should deliver the lasting benefits which are necessary, will help the Burundian judicial system and will be, we hope, a continuing deterrent to any future actions.

Mr. Zacklin's justification of the commission, which we set in the context of the work of the special chamber, was particularly welcome, because we had been interested in the interaction, how the two would come together.

I think the questions I would have asked have been asked. I would just extend from the United Kingdom every best wish to Burundi now as it moves forward, that it should do so with utmost success.

Mr. Faaborg-Andersen (Denmark): I too would like to thank the Minister of Justice of Burundi and Assistant Secretary-General Zacklin for their briefings.

We are very pleased to hear that the Transitional Government in Burundi is committed to intensifying its efforts to end impunity. A sustainable peace can be secured only if perpetrators of crimes are brought to justice. Neglect may endanger the progress already made in securing peace and stability in Burundi. The Burundians need the assistance of the United Nations to make progress in bringing an end to impunity. We find that the recommendations in the report on the establishment of a national commission of inquiry and a special judicial chamber strike a good balance between justice and reconciliation and form a very good basis for entering into further discussions. Dialogue between the Transitional Government and the United Nations Operation in Burundi on the specific implementation modalities should thus commence as soon as possible.

Let me also use this opportunity to commend countries in the region for their constant effort to support the peace process in Burundi, and particularly the role played by South Africa and Tanzania, which have had very significant, positive influence.

Finally, without Burundian ownership of the process to end impunity, no real progress will be made. Like others, we would like to hear suggestions from the Minister as to how that ownership could be further enhanced.

Mr. Benmehidi (Algeria) (*spoke in French*): I would like, first of all, to welcome the Minister of Justice of Burundi, Mr. Kiganahe, and to thank him for his statement and for the clarification he has provided. I also thank Mr. Zacklin for his excellent presentation of the report of the assessment mission on the creation of an international judicial commission for Burundi.

My delegation notes with satisfaction that the mission to Burundi came back convinced of the need to set up an international mechanism for seeking the truth and establishing responsibility for crimes committed in that country.

The process of adopting the law to create the national truth and reconciliation commission and the scepticism with which that law has been greeted testify to the need for a credible, impartial and independent mechanism likely to win the support of all Burundians in their search for truth and justice. The support of the international community is essential to establish national reconciliation on a solid foundation. The formula that is proposed — a two-stage mechanism consisting of a national truth commission of mixed composition to look into accountability, and a special chamber in the court system to pursue those responsible for crimes, with both having a major international component — seems to us to be of a nature to help the Burundians to reach the goal of promoting the rule of law, protecting human rights and fighting impunity. This formula also is less

burdensome and easier to implement, and it opens up the prospect of contributing to the long-term improvement of the functioning of the judicial system in Burundi.

We hope that the Security Council will be able to respond positively to the expectations of the people of Burundi with regard to the search for truth promoting justice and fighting impunity, as expressed by the Minister, Mr. Kiganahe.

Mr. García Moritán (Argentina) (*spoke in Spanish*): I would like to thank the Minister of Justice of Burundi, Mr. Kiganahe, for his clear presentation today and for his comments on how to implement the recommendations in the report of the assessment mission. We also thank Mr. Zacklin for introducing the report submitted to us by the Secretary-General.

In that regard, I would like to highlight the importance that my own country attaches to judging crimes against humanity, genocide and war crimes so that the perpetrators of these aberrant crimes will not go unpunished anywhere in the world. It is for this reason that my Government supports any initiative which is aimed at bringing those guilty of these gravest of crimes to justice. The Argentine delegation also supports the initiative under which the Secretary-General would begin negotiations with the Burundian parties in order to implement the recommendations contained in the report of the assessment mission.

Mr. Manongi (United Republic of Tanzania): We, too, welcome Mr. Kiganahe, Minister of Justice of Burundi, and are thankful for his presentation here this afternoon. We are also thankful for the briefing given by Assistant Secretary-General Zacklin.

We are immensely pleased by the agreement of the parties in Burundi in support of the establishment of the mechanism for accountability. The fact that there is a broad consensus in Burundi as to this approach should be welcomed and supported by the Council. We commend this resolve and consider it among the positive measures adopted by the Transitional Government and as a reflection of the Government's good faith in resolving the difficulties that Burundi faces.

In our view, the Arusha Peace and Reconciliation Agreement was not cast in stone. New perspectives are being offered in an attempt to promote national reconciliation, and we must support such attempts. In extending that support, we, too, are conscious of the fact that Burundi will require considerable support from the international community. We should not fail it. We therefore join in appealing for international support in funding the mechanisms being envisaged in Burundi for justice and reconciliation. In our view, this heavy responsibility would have best been served through assessed contributions. Ending impunity must be our collective responsibility and is in our own self-interest.

Lastly, we join the Minister in expressing great caution regarding the relationship between the truth and reconciliation commission and the special chamber of the judicial system in Burundi.

Mr. Zinsou (Benin) (*spoke in French*): We welcome the Minister of Justice of Burundi to New York, as well as his delegation. We thank him for his very enlightening statement. We wish also to express our deep appreciation to Assistant Secretary-General Zacklin for his introduction of the Kalomoh report.

The presence of a ministerial delegation from Burundi at this meeting bears witness to our shared concern — that of the Security Council and of the Government of Burundi — to continue to seek together ways of achieving lasting peace in Burundi. Recent events on the political scene there have given fresh hope to the people of that country that peace will be restored. We find in that one more reason for the international community to continue, and even step up, the considerable efforts that have been made for several years now to help Burundi restore peace.

However, we all are aware that the road to peace and stability in Burundi is still full of pitfalls and replete with challenges. We are particularly concerned by the repeated violations of human rights. One of the major challenges is the fight against impunity and the struggle for national reconciliation. Recent proposals contained in the Kalomoh report seem to us extremely useful and relevant in that regard.

The quest for national reconciliation should take duly into account the need to promote justice. The establishment of truth should be accompanied by the establishment of responsibility. We cannot overestimate the contribution that the twin mechanism proposed could make to the strengthening of the judiciary apparatus and of the rule of law in Burundi. It is our hope that the political leadership in Burundi as a whole and all the parties involved will support these

proposals, and that they will engage in this process in a spirit of sincerity, so that the sources of violence in the country can be eliminated and human rights violations discouraged once and for all, in order to relieve Burundi of the burden of its recent past.

My delegation, together with other Council members, will give its unswerving support to the implementation of the recommendations of the Secretary-General towards that end.

Mr. Mercado (Philippines): We join others in welcoming the Minister of Justice of Burundi. We believe that his presence here underscores the importance that his country attaches to ending impunity, which we all know is the root of instability in Burundi. We also thank Mr. Zacklin for his comprehensive briefing.

Now that Burundi, after more than a decade of civil war, is inching towards recovery, it is important that the truth about past atrocities be revealed and that the perpetrators be brought to justice. Learning the truth about past human rights violations and punishing those responsible for them are prerequisites for the establishment of democracy and respect for the rule of law.

We therefore welcome the innovative recommendations of the assessment mission to create a twin accountability mechanism — a national truth commission comprising international and local commissioners, and a special chamber within the Burundi court system.

I should like to pose two questions to the Justice Minister. The first relates to the composition of the national truth commission. Considering the deep ethnic divisions within Burundian society and the mutual distrust between the two ethnic groups, may we have his thoughts on the selection of the local commissioners? Should it be the United Nations or the Government of Burundi that selects such local commissioners? Secondly, concerning the budget, we believe that, whatever mode of financing is selected, it should be sustained and viable.

On that point, may we know from the Minister how long it is estimated that it would take the twin mechanisms to accomplish their goals?

Mr. Vassilakis (Greece) (*spoke in French*): I, too, would like to welcome the Minister of Justice of Burundi, Mr. Kiganahe, and to thank him for having travelled to New York to express the views and decisions of his Government. Our sincere thanks go also to Assistant Secretary-General Zacklin for his very clear and succinct report.

In establishing a judicial commission of inquiry, we always face a dilemma: we need to punish those who have committed crimes without endangering the reconciliation process within the country, in which all must be involved. We support fully the recommendations to create a truth and reconciliation commission as well as a special chamber. We congratulate the Government of Burundi and the Burundian parties, who had the courage to take this decision to establish justice in the country and to put an end to impunity. That could serve as a precedent for avoiding similar situations in the future.

We wish you every success, Mr. Minister. As you have just heard, I believe, the representatives of the Security Council will stand with you.

The President (*spoke in French*): I shall now make a statement in my national capacity.

We listened with interest to the statements of Mr. Zacklin, Assistant Secretary-General for Legal Affairs, and Mr. Kiganahe, Minister of Justice of Burundi, whom we thank for coming here today.

Two years ago to the day, on 15 June 2003, the Security Council mission that I had the honour to lead in the region of Central Africa and the Great Lakes was in Bujumbura. I recall that all the actors of the Burundi transition process used the same words regarding the need to put an end to impunity. All of them expected a response from the Security Council with a view to establishing an international judicial commission of inquiry. Everyone knew how essential the issue of impunity is in understanding the Burundi conflict. The response that will be given will be decisive in establishing long-term peace and reconciliation in Burundi.

Two years ago there were questions regarding the advisability and feasibility of the mechanism that had been envisaged when the Arusha Agreement was signed. And then important political developments occurred that the Security Council could not ignore. I believe that we also had in mind the more recent experiences of efforts in other conflict situations — particularly in Sierra Leone — to establish the truth, promote reconciliation and prosecute those responsible

for the most serious crimes. Therefore, we asked the Secretary-General to discuss the issue with the Burundian people.

Today, I am very pleased that Mr. Kiganahe has come to confirm that the Transitional Government agrees with the Secretary-General's recommendations. As we know, it was not easy to secure the agreement of the Burundian parties, because the proposed mechanism differs from what was envisaged and agreed at the outset, in Arusha. But the Minister of Justice tells us that the Burundian Government supports the recommendations, which he says meet the two concerns of the Arusha negotiators and the Burundian people as a whole: first, establish the truth, and secondly, prosecute and punish the guilty.

We hope that the discussions for the implementation of this agreement between the Secretary-General and the Burundian authorities can begin swiftly. It is important that the various actors concerned be consulted, because ownership of this process by the Burundian people themselves will guarantee its success. We therefore believe that the discussions should begin immediately within the framework of the transition. Everyone is well aware that the transition has entered its final phase and that the current priority is to successfully hold the elections, which will culminate in August with the presidential election.

Thus, we believe it will be the future Government's responsibility to finalize matters with the Secretary-General. We are confident in the resolve of the Burundian people to harmonize the concern for justice with the concern for reconciliation.

I now resume my functions as President of the Security Council.

I give the floor to Mr. Kiganahe to respond to comments and questions raised.

Mr. Kiganahe (*spoke in French*): I take this opportunity to thank in my turn the representatives of various countries present at this meeting for the support they expressed for the recommendations outlined in the Kalomoh report (S/2005/158). I also thank representatives for the support they are providing and the attention they are devoting to the political developments in my country.

Nearly all the speakers expressed their support for the mechanisms proposed in the Kalomoh report. We expressed approval of them in our statement, and we believe that with the support and the contributions of countries Members of the United Nations system, those mechanisms can be implemented effectively.

During the various statements a number of questions were raised. For example, the representative of Romania asked whether the subregion and the force and staff of the United Nations Operation in Burundi (UNOB) in Bujumbura could assist us in implementing the mechanisms proposed in the Kalomoh report. The representative of the United States wondered what the cost of the operation would be. The representative of Japan asked how long it would take for the mechanism to be established, given the legal process involved and, in particular, the adoption of the necessary laws by the Parliament that will be elected. Other speakers raised an important question about the mechanism for ownership by the Burundian people of the solutions proposed in the Kalomoh report, because it is felt that these solutions can become effective only if the people of Burundi support them and believe that the path that has been charted is useful and wise.

I consider the Great Lakes region countries of Tanzania, Uganda and Rwanda, along with South Africa, to have played a very important role in the peace process in Burundi. In this regard, the Arusha Peace and Reconciliation Agreement, which has provided the legal and political basis for the exercise of power in Burundi over the past four years, was adopted by Burundian political partners as a result of the engagement and fine contribution of His Excellency Julius Nyerere, former President of Tanzania, and, subsequently, of the enlightened leadership of His Excellency Nelson Mandela, former President of South Africa, with the guidance of President Museveni, Chairman of the Great Lakes regional initiative, all of whom dedicated themselves to the success of the process.

Today, the United Nations forces that are operating in Burundi — whose contribution to stabilizing the peace process is obvious — are made up of elements from South Africa, Tanzania, Kenya and even Uganda. The subregion's contribution is thus vital. We must not forget, however, that such contributions would not have been possible without tireless and varied support, in particular financial support provided by the United Nations.

We will continue, therefore, to attach great importance to support from the subregion, as well as to the support that the United Nations has constantly provided to the people of Burundi and to the search for peace.

The various elements of the United Nations Operation in Burundi in Bujumbura, could, indeed, play a genuine role in establishing the various mechanisms — or, at least, in preparing an environment conducive to their effective implementation. This would mean, in particular, participation in capacity-building, because, as has been rightly emphasized in the Kalomoh report, most of the components of the judicial apparatus have human-resources shortcomings — in terms of the number of staff and their qualifications and judicial experience with regard to crimes of such gravity as genocide, war crimes and crimes against humanity. We are therefore convinced that we will be able to benefit from the presence of the various United Nations staff members with a view to immediately laying the groundwork for the implementation of the recommendations contained in the Kalomoh report.

As for the timing — another issue that was raised by a number of speakers — we believe that the Government that will emerge as a result of the elections will spare no effort to speed up the establishment of the mechanisms.

By the end of August, a new Government will have been put in place as a result of the electoral process; to date, commune elections have been held. We believe that, on the basis of the principle of the continuity of the State, the current Government's commitments will be taken into account by the next Government. We are all the more convinced of that, given that the majority forces that are progressively emerging supported the Arusha Agreement in 2000 and, in 2003, the signing in Tanzania of the comprehensive ceasefire agreement of 16 November 2003. That reassures and convinces us that, with regard to these issues, there will be no regression. And we want to give the Council that assurance, too.

On the question of ownership of the mechanisms by the people of Burundi, we believe that, if the mechanisms are perceived by the Burundian community as being the result of foreign intervention, the solutions that emerge will be unlikely to meet the expectations of the people of Burundi.

The fact that consideration has been given to involving the people of Burundi in the search for truth and the process of justice is the first sign of respect for the people of Burundi; this, in turn, will prompt them to support the mechanisms. Furthermore, it was in Arusha, where Burundian political partners met, that the initial proposals were made and the request formulated. We recognize that the recommendations in the Kalomoh report represent a further elaboration on the terms of the request made in Arusha, where the Burundian political actors met. In other words, it will not require a special effort to make the people of Burundi understand that the solutions proposed in the Kalomoh report are, indeed, solutions to the problems that they themselves raised through their political representatives.

We are also convinced that control and ownership by the Burundian people of the mechanisms proposed in the Kalomoh report will be effective only if the Government commits itself to the debate on this question with the participation of different segments of society. We will thus be participating in an awareness-raising campaign to ensure that any future solution takes into account the opinions, views and feelings of the various sectors of Burundian society.

Lastly, the mechanisms outlined in the Kalomoh report will be integrated into our domestic legal system through the adoption of legislation by an elected parliament. We believe that the elected parliament will see to the interests of the people. It will be mandated by the people to manage the most important issues, and in particular the troubling search for truth and justice. The participation and involvement of the legislature in the implementation of those mechanisms will be the finest illustration of the fact that the people will have been consulted through its representatives. We can therefore assure the Council that there will be no problem ensuring the national ownership of those mechanisms.

The President (*spoke in French*): I call on Mr. Zacklin to respond to the questions that were addressed directly to him and to make any comments he might care to make following our debate.

Mr. Zacklin: I listened very carefully to the statements that were made by the members of the Council in support of the Kalomoh report and its recommendations, and I paid particular attention to the statement by the Minister of Justice of Burundi, and in

particular his confirmation that Burundi supports those recommendations. That is particularly important in the context of the question of national ownership, which, as I said in my own statement, is of vital importance to the success or failure of any accountability mechanism that we might put in place.

The report of the Secretary-General and the recommendations are, of course, only a beginning. They are really a blueprint, and it is quite obvious that there are quite a number of points that require further elucidation, some of which have been mentioned this afternoon, including, for example, questions of timing and questions of funding. The Secretariat will provide the information in response to those questions as we proceed in the next stage of the process. They are not easy questions to deal with, but we would be prepared to provide that information as soon as we are in a position to have further discussions with the Government of Burundi.

The Secretary-General has made it clear that he wishes the Secretariat to proceed as soon as possible with the implementation of the recommendations, and we look forward to having further discussions with the representatives of the Government of Burundi shortly.

The President (*spoke in French*): There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 4.55 p.m.